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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/083,263
Filing Date: February 25, 2002
Appellant(s): VACCARELLI ET AL.

Jeannette M. Walder
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/17/2009 appealing from the Office action mailed 12/23/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An appeal was previously filed in this application, which resulted in the reversal of the Examiner's grounds for rejection. Subsequent to the Decision on the Appeal, the application was rejected on new grounds.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1-2, 4-9, and 19-20 rejected under 35 U.S.C. 102(b) as being anticipated by Remedy (as evidenced by Newswire ("Remedy Introduces New Applications To The Customer Relationship Management (CRM) Market") and Strauss ("My Remedy what!? Has been resolved???")).

Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Remedy (as evidenced by Ungil ("ARS 5.0 course report")).

Claim 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Remedy in view of Official Notice (supported by Gusick (US-PG-PUB 2001/0047270)).

NEW GROUND(S) OF REJECTION

Claims 1-9 and 19-21 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The new ground(s) of rejection may be found in section (9) below.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

"Remedy Introduces New Applications To the Customer Relationship Management (CRM) Market" PR Newswire. New York: Feb 17, 1999. pg. 1.

Strauss, Christopher. "My Remedy what!? has been resolved???" . September, 1998,
Accessed via Internet Archive Wayback Machine
<http://web.archive.org/web/19991114062001/http://www.unt.edu/benchmarks/archives/1998/september98/remedy.htm>>.

Ungil, Carlos. "ARS 5.0 course report". Apr 8, 2002.

2001/0047270

GUSICK ET AL.

11-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-9, and 19-20 rejected under 35 U.S.C. 102(b) as being anticipated by Remedy (as evidenced by Newswire ("Remedy Introduces New Applications To The Customer Relationship Management (CRM) Market") and Strauss ("My Remedy what? Has been resolved???").

Examiner notes that the parts of the system which are recited in the claims are defined by functional language, ie. a query module for..., an analysis module for..., a reporting module for... Therefore, the language of the claims is given weight to the extent that the prior art is or is not capable of meeting the functional limitations. see *In Re Schreiber*, 128 F.3d 1473 (Fed. Cir. 1997).

Regarding claim 1,

Remedy contains a query module for automatically sending a query to a customer as to whether the customer has any problems with goods or services provided by a provider that have

not been resolved to the customer's satisfaction according to a predetermined schedule (see Strauss, page 1, the generated email).

Examiner notes that Remedy sending a query to the customer after the customer has already opened a ticket qualifies as a predetermined schedule. Examiner also notes that Remedy sends the query to a customer after the customer has already opened a ticket rather than sending the query to a customer before the opening of a ticket. The references meet the limitations of the claim since the claim does not recite any required order. Even if the order was required, Bressler ("Internet CRM must have human touch") teaches contacting the customers to verify that everything is to their satisfaction prior to knowledge of a customer problem (see "Follow up").

Remedy receives responses from customers to the queries, wherein a query includes a user interface for receiving responses input from a customer. The user interface is e-mail, ie. Remedy directs the customer to e-mail a particular person or group (see Strauss, page 1 generated e-mail).

Remedy contains an analysis module for analyzing responses from customers to identify a customer problem, for sending the identified customer problem to a problem solver module for resolution by a problem solver, and for tracking status of the identified customer problem (see Strauss, page 2 paragraph 3). Remedy is configured to use e-mail as a means for submitting service tickets (see Newswire, page 2 paragraph 6) and automatically routes requests for support to the correct support personnel, ie. problem solver module (see Newswire, page 2 paragraph 3). Remedy also allows for tracking the status of the identified customer problem via the web (see Strauss, "Future Remedy capabilities for UNT customers" on page 5).

Remedy contains at least one problem solver module for receiving an identified customer problem from the analysis module, for transmitting the identified customer problem to a problem solver, for receiving a solution to the identified customer problem from the problem solver, and for transmitting the solution to the customer (see Newswire, page 2 paragraphs 3 and 6).

Regarding claim 2,

Since Remedy sends queries, receives responses, identifies problems, and generates solutions, it MUST have a memory to store copies of each query sent, response received, problem identified and solution generated (the memory is at least random-access memory). Additionally, Remedy also stores this information in non-volatile memory in order to support generation of reports (see at least Strauss, page 2 sixth bullet point).

Regarding claim 4,

The query module sends queries via e-mail and receives responses via e-mail (see Newswire, page 2 paragraph 6).

Regarding claim 5,

Remedy teaches wherein the analysis module includes a pattern recognition system for analyzing customer responses. A pattern recognition system is inherent since Remedy automatically categorizes the type of problem based on analyzing customer responses.

Examiner additionally notes that Oatman (US Patent 5,778,157) teaches using a more specific type of pattern matching that may be more relevant to Applicant's invention. More

specifically, Oatman teaches using natural language processing to analyze customer responses in order to identify a type of problem (see column 3 line 58-column 4 line 23).

Regarding claim 6,

Remedy includes a customer relationship management database (see Strauss, page 2 sixth bullet point). Remedy is a Customer Relationship Management solution (see Newswire) and therefore any database the system uses is a Customer Relationship Management database. Remedy further includes a problem reporting module (see Strauss "What Remedy is intended to do" on pages 1-2).

Regarding claim 7,

Remedy includes an account activity module including records of customer account activity for storing a record of customer queries, customer responses, customer problems and solutions (see Strauss "Future Remedy capabilities for UNT customers" on page 5).

Regarding claims 8 and 9,

Remedy follows up to determine that everything has been resolved to a customer's satisfaction (see Strauss, page 1 generated e-mail). The frequency of the follow-up, whether it be once a month or once a week, bears no patentable distinction.

Regarding claims 19 and 20,

Remedy is configured to close the identified customer problem responsive to a response from the customer verifying that the problem has been solved to the customer's satisfaction and open a new customer problem responsive to a response from the customer that the problem has not been solved. In particular, Remedy allows customers to "Check the status of their own trouble tickets, close them once they have been resolved, and reopen them if they have not really been resolved" (see Strauss "Future Remedy capabilities for UNT customers" on page 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Remedy (as evidenced by Ungil, "ARS 5.0 course report").

Regarding claim 3,

As described above, Remedy is configured to send queries, receive responses, identify problems, and generate solutions. At the time of invention, Remedy also contained a report generator module (as evidenced by Ungil, "User interface" on page 2). It is not explicitly stated

that the report generator module generates reports of queries sent, responses received, problems identified, and solutions generated. However, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Remedy to generate these specific reports since these reports contain information describing some of the main functions of the system. One skilled in the art would have been motivated to make the modification in order to provide useful metrics in measuring the quality of the system in providing problem resolution.

Examiner notes that while the date of the Ungil reference itself is not prior to the filing date of the application, the reference describes Remedy Action Request System 5.0, which was released in December 2001 (see “Conclusion” on page 4).

Claim 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Remedy in view of Official Notice (as evidenced by Gusick (US PG-PUB 2001/0047270)).

Regarding claim 21,

Remedy allows customers via the web to “Check the status of their own trouble tickets, close them once they have been resolved, and reopen them if they have not really been resolved” (see Strauss “Future Remedy capabilities for UNT customers” on page 5). Remedy is further configured to communicate via e-mail to check whether or not a customer has an unresolved problem.

Remedy teaches querying whether a customer has any problems with goods or services provided by a provider that have not been resolved to the customer’s satisfaction. Remedy does not explicitly teach a “yes” and “no” link enabling a response from the customer. Official Notice

is taken that "yes" and "no" hyperlinks enabling a response were old and well known at the time of invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Remedy with a yes link for enabling a customer to respond in the affirmative and a no link for enabling a customer to respond in the negative. One skilled in the art would have been motivated to make the modification to facilitate, in a convenient manner, the process in which Remedy ensures that the problem was actually resolved.

In support of the Official Notice, Examiner provides Gusick(US PG-Pub 2001/0047270 A1). Gusick provides an e-mail with a "yes" or "no" link in which an expert may respond to a query in the affirmative, wherein responsive to selection of the yes link, the system displays an interface for receiving input from the expert (see paragraph 75 and 76).

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 and 19-21 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1-9 and 19-21, the claims are directed to non-statutory subject matter because the claimed invention is a system with no structural limitations. The claimed system is defined merely by software or terms synonymous with software or files such as “modules”, “engine”, “webpage”, “tool”, “logic”, “interface”, “GUI” etc.

(10) Response to Argument

Appellant's arguments focus on independent claim 1. Appellant argues that:

- a. Remedy does not send open ended queries to customers; Remedy does not send "a query to a customer as to whether the customer has any problems with goods or services provided by a provider that have not been resolved to the customer's satisfaction." (see pp. 9-10 of the brief).
- b. Remedy discloses a tracking system for computer support problems; Remedy is not a customer satisfaction system. (see pp. 10-11 of the brief).

Appellant applies the same two arguments above in regards to the rejections of claims 3 and 21, stating that the claims are allowable by virtue of their dependence on claim 1.

In regards to argument (a) specifically, Appellant argues that:

"A 'query as to whether the customer has any problems' is an open-ended query. The customer is not limited by his response to a particular device or service call. Nor must a customer have already opened a ticket for service to receive the query. Open-ended queries result in more responses from recipients of the open-ended query. A side benefit of open-ended queries is that some customers response with praise and other positive comments about the provider's goods or services." (see pp. 9-10 of brief).

In response to Appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an "open-ended" query) are **not recited in the rejected claim(s)**. Contrary to Appellant's argument, a "query as to whether the customer has any problems" is **not necessarily** an open-ended query. Although the claims are interpreted in light of the specification, limitations from the specification

are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The remainder of the argument focuses on two topics: (1) Remedy does not disclose an open-ended query; and (2) an open-ended query differs from the query disclosed by the reference. Since the claims do not even recite an "open-ended" query, but instead simply recite a "query", the arguments are not applicable to the standing rejection.

In regards to argument (b) specifically, Appellant argues that:

"A tracking system can only track those job tickets/service requests the customers have input into the system. Appellants' customer satisfaction system identifies more problems than a tracking system which relies entirely on customer-initiated problems. A tracking system is not the same as Appellants' customer satisfaction system. The goal of a tracking system is to keep track of all job tickets/service requests that customers have input into the system. The goal of a customer satisfaction system is to eliminate problems and thus ensure repeat business. In order to eliminate problems, all problems must be identified. This is not achieved by waiting for customers to initiate the request. Appellants' customer satisfaction system eliminates problems by sending open-ended queries to customers, thereby eliciting more responses (both those that indicate a problem and those that indicate there is no problem). The analysis module in Appellant's system analyzes responses from customers to identify a customer problem. If a problem is identified, it is routed to a problem solver module for resolution. Since more problems are identified earlier, more problems can be fixed earlier, ensuring greater customer satisfaction." (see page 11 of brief).

Again, Appellant relies on features which are **not recited in the rejected claim(s)** (ie. query must be sent before receipt of service). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is not recited anywhere in the claims that a query must be sent before receipt of service. Instead, Appellant merely relies on the fact that the claim recites a "customer satisfaction system" in order to argue that the reference

does not disclose more specific features which are not recited by the claims. That is, Appellant attempts to distinguish the claimed invention over the prior art by merely reciting a “customer satisfaction system” in the claim.

As discussed above, Appellant attempts to distinguish the claimed invention over the prior art merely because it recites a “customer satisfaction system”. More specifically, Appellant argues that Remedy discloses a “tracking system”, which does not read on a “customer satisfaction system”. However, in contrast to Appellant’s argument, Examiner asserts that one of ordinary skill in the art could reasonably interpret a “customer satisfaction system” as a service ticket system (such as the one disclosed by Remedy); i.e. customers may submit a service ticket to Remedy when they are unsatisfied with a service in order to achieve a higher level of satisfaction with that service (in this manner, Remedy is indeed a “customer satisfaction system”).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the foregoing reasons, it is believed that the rejections should be sustained.

This examiner’s answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/ERIC T. WONG/
Examiner, Art Unit 3693

/James A. Kramer/
Supervisory Patent Examiner, Art Unit 3693

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:

/J. A. K./ James Kramer
Supervisory Patent Examiner, Art Unit 3693

Vincent Millin /vm/
Appeals Practice Specialist
